IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 7096 OF 2004

Padma w/o Gurunath R. Naik & ors. .. Petitioners

versus

Manjit Singh s/o Karnail S.Bhatti .. Respondent

...

Mr.V.S. Sonpal for the petitioners.

CORAM : D.G. KARNIK, J

DATED : 30th August 2004

P.C:-

1. Heard the learned counsel for the petitioners.

2. This Writ Petition is directed against an order of rejection of an application filed by the petitioner tenant to dismiss the second suit under Order II Rule 2 of the Code of Civil Procedure. Being interlocutory, I am not inclined to interfere.

3. The first suit was filed by the respondent landlord on the ground of bonafide requirement. The

second suit has been filed on the ground of default in payment of rent, acquisition of alternate accommodation and non user. Prima facme, the cause of action of the two suits are different. Whether these grounds existed at the time of the filing of the first suit and whether ommissin to sue on those grounds bars a second suit is a question of fact which cannot be decided without trial. In the circumstances, the second suit could not have been dismissed at the threshold.

4. Hence, petition rejected.

D.G. KARNIK, J